

REMARKS

In the final Office Action mailed on April 18, 2008, claims 1-50 were rejected. Claims 1, 22, and 37 have been amended. Claims 8, 29, and 42 have been canceled. Claims 1-7, 9-28, 30-41, and 43-50 remain pending. Applicants request reconsideration in view of the following remarks.

Claims 1-50 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent Pub. No. 2004/0297397 (the Doddi reference).

I. Interpretation of “Profile Model”

In the final Office Action Examiner states, citing MPEP 2111.01, that “only issued patents are interpreted in light of the specification.” Examiner further states that under MPEP 2111.01, “the Examiner is obligated to *interpret the claims in the broadest reasonable manner* ... where only *issued patents are interpreted in light of the specification*.” (Emphasis original.)

However, MPEP 2111.01(I) requires that “during examination the USPTO must give claims their broadest reasonable interpretation **in light of the specification**.” (Emphasis added.) Thus, claims are interpreted in light of the specification and given the broadest reasonable interpretation consistent with the specification.

The terms “profile model,” “diffraction signal,” and “machine learning system” are all used in the independent claims 1, 22, and 37. Thus, at a minimum, all three terms should be construed to have distinct meanings. The specification also provides several examples of “profile models”. For example, Figures 2A-2E, and 8 show example profile models and paragraphs [0021], [0038], and [0071] describe the features of profile models. The features of the profile models include parameters such as height and width. Independent claims 1, 22, and 37 also have been amended to recite that the profile parameters of the initial profile model and the optimized profile model characterize the structure to be examined.

II. Doddi Does Not Disclose Eliminating or Fixing a Profile Parameter

Independent claims 1, 22, and 37 recite that the optimized profile model is modified by eliminating at least one profile parameter or fixing to a value at least one profile parameter. As noted above, claims 1, 22, and 37 also recite that the profile parameters of the optimized profile model characterize the structure to be examined.

In the final Office Action, the Examiner cites to Doddi paragraph [0047] as disclosing “eliminating or fixing to a value at least one profile parameter.” However, paragraph [0047] discloses dividing profiles to be generated into two or more partitions and training a machine learning system for each partition. (Paragraph [0047], lines 1-9.) The partitioning is used so “that parallel processing can be used” or that each machine learning system may be more accurate. (Paragraph [0047], line 9-19.) Thus, Doddi does not disclose modifying the optimized profile model by eliminating at least one profile parameter or fixing to a value at least one profile parameter, as recited in independent claims 1, 22, and 37.

Therefore, Applicants assert that claims 1, 22, and 37 are allowable over Doddi. Applicants also assert that claims 2-7, 9-21, 23-28, 30-36, 38-41, and 43-50 are allowable for at least the reason that they depend from allowable independent claims.

III. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 509982005900. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

By /Peter J. Yim/

Peter J. Yim

Registration No.: 44,417

MORRISON & FOERSTER LLP

425 Market Street

San Francisco, California 94105-2482

(415) 268-6373